



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 29, 1998

Ms. Sonya Letson  
County Attorney  
Office of the Potter County Attorney  
500 S. Fillmore, Room 303  
Amarillo, Texas 79101

OR98-0281

Dear Ms. Letson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111987.

Potter County (the "county") received an open records request for:

1. The 1997 daily receipt ledger which records payments made by people who have written bad checks;
2. Individual receipts for check payments made in 1997; and
3. Data regarding payments made on bad check accounts submitted in August, September and October, 1997 to the Potter County Data Processing Department.

You inform us that the county seeks to withhold the documents pursuant to sections 552.103 and 552.108 of the Government Code. We have considered your arguments and reviewed the information submitted.<sup>1</sup>

Section 32.41 of the Texas Penal Code, titled "Issuance of Bad Checks," provides in part:

---

<sup>1</sup>You reference a request made to the department head of the Potter County Data Processing Department for "remittance advice statements." You say that the request is not within the control of the Data Processing Department. You have decided instead to submit the requested information as you state that "Data Processing simply instructs the computer to generate paper copies of the information in the computer system upon request of this office. My office places the information into the computer system."

(e) A person charged with an offense under this section may make restitution for bad checks. *Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office.* In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) An offense under this section is a Class C misdemeanor. (Emphasis added.)

Article 102.007 of the Code of Criminal Procedure, formerly, Code Crim. Proc. art. 53.08, grants the district attorney authority to collect fees in connection with the processing of checks issued or passed in a manner that makes the issuance or passing a violation of law. See Open Records Decision No. 518 (1989). However, the fees collected under subsection (c) of the article are deposited in the county treasury in a fund to be administered by the district attorney and expenditures from this fund are at the sole discretion of the attorney and may be used only to defray the salaries and expenses of the prosecutor's office. Code Crim. Proc. art. 102.007(f).

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

In Open Records Decision No. 452 (1986) at 4, this office stated:

Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

Litigation has been found to be reasonably anticipated when an individual has hired an attorney who demands damages and threatens to sue the governmental entity. Open Records Decision No. 551 (1990) at 2. This office has found that litigation was not reasonably anticipated when an applicant who was rejected for employment hired an attorney, and the attorney as part of his investigation asked for information as to why his client was rejected. Open Records Decision No. 361 (1983). In this situation the prospect of litigation regarding the specific cases evidenced by the names are too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated).

You have not demonstrated how litigation is reasonably anticipated for those cases in which restitution has not been made. Nor have you explained how in the cases where restitution has been made, how you may reasonably anticipate litigation to ensue. Additionally, we note that in the instant matter, the information, concerning what each person owes to the merchant has been obtained by all parties to the litigation, so that no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Relatedly, we do not have any explanation indicating which of the names listed in the requested documents have resulted in actual prosecution. Section 552.103 does not apply to the information requested.

Section 552.108 of the Government Code reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

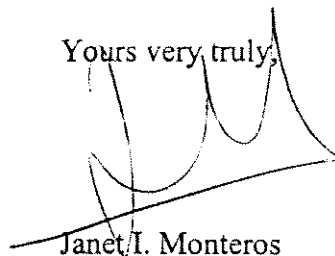
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You indicate that some of the cases relating to the names listed in the requested information deal with the investigation of crime that did not result in conviction or deferred adjudication. You also argue that release of the names of hot check writers would interfere with the prosecution of hot check writers. We note, however, that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The information relating to the daily receipts, individual receipts and remittance advice for checks submitted to merchants constitutes basic information. Thus, you must release the information requested.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/ glg

Ref.: ID# 111987

Enclosures: Submitted documents

cc: Mr. Herman Guetersloh  
Amarillo Globe-News  
P.O. Box 2091  
Amarillo, Texas 79166  
(w/o enclosures)